

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
V.) No. 2:10-CR-126
)
JEREMIAH CHANCE STALLANS)

REPORT AND RECOMMENDATION

Defendant has filed a “Motion To Challenge The First Count Of The Indictment.” (Doc. 22). This motion has been referred to the United States Magistrate Judge under the standing orders of this Court and pursuant to 28 U.S.C. § 636(b). A hearing was held on July 12, 2011.

Count One charges the defendant with employing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction thereof in violation of 18 U.S.C. § 2251(a). Defendant argues that “no facts exist which could allow him to be convicted of that count.”

Defendant may be correct in his assertion that the United States will be unable to prove any facts to justify a conviction of Count One. However, the court clearly cannot make a pretrial ruling in this regard. Stated another way, the Grand Jury has found probable cause to charge defendant with this offense, and the United States must be allowed the opportunity to attempt to prove its case to the jury. The court cannot *assume* that it has already heard all the proof the United States has with regard to the allegations of Count One,

bearing in mind that the United States is not required to disclose its witnesses to the defendant prior to trial. *See, United States v. Perkins*, 994 F.2d 1184 (6th Cir.), *cert.* denied 510 U.S. 903 (1993).

Defendant's recourse is a motion for judgment of acquittal under Rule 29 after the close of the United States' proof. It is respectfully recommended that defendant's motion, to the extent that it requests a pretrial dismissal of Count One, be denied.¹

Respectfully submitted,

s/ Dennis H. Inman
United States Magistrate Judge

¹Any objections to this report and recommendation must be filed within fourteen (14) days of its service or further appeal will be waived. 28 U.S.C. 636(b)(1).